

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

March 9, 2007

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:06HD-131

HAWAII

Reconsideration of Rent under General Lease No. S-5523 to The  
Volcano Art Center, Lessee, for Educational and Artistic  
Activities Purposes, Puna, Hawaii, Tax Map Key: (3) 1-9-5:9.

APPLICANT:

The Volcano Art Center, a Hawaii non-profit corporation.

LEGAL REFERENCE:

Section 171-43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Olaa situated at Olaa, Puna, South  
Hilo, Hawaii, identified by Tax Map Key: (3) 1-9-5:9 as shown on the  
attached map labeled Exhibit A.

AREA:

7.411 acres, more or less.

ZONING:

State Land Use District: Urban  
County of Hawaii CZO: Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State  
Constitution: YES \_\_\_\_\_ NO \_\_\_\_\_x

CHARACTER OF USE:

Educational and artistic purposes.

LEASE TERM:

Sixty-five (65) years, commencing on May 1, 1997 and expiring on April 30, 2062.

ANNUAL RENT:

\$2,030.00 for the time period May 1, 1997 to April 30, 2007.

RENTAL REOPENINGS:

At the 10th, 20th, 30th, 40th, 50th and 60th years of the lease term.

DCCA VERIFICATION:

Place of business registration confirmed:	YES	<u>x</u>	NO	<u>      </u>
Registered business name confirmed:	YES	<u>x</u>	NO	<u>      </u>
Applicant in good standing confirmed:	YES	<u>x</u>	NO	<u>      </u>

BACKGROUND:

The Land Board at its meeting of April 26, 1996, under agenda Item D-13, approved the withdrawal of approximately 7.32 acres from the Olaa Forest Park Reserve and the direct issuance of a 65 year lease to the Volcano Art Center for educational and artistic activities. General Lease No. S-5523 commenced May 1, 1997.

DISCUSSION:

According to General Lease No. S-5523 the "rental for any ensuing period shall be nominal as defined as twenty-five percent (25%) of the fair market rental at the time of reopening."

A rent reopening scheduled for the 10th year, falls on May 1, 2007. Appraisal Hawaii was contracted to determine the fair market rental. The new fair market rental was determined to be \$8,000 per annum. A rental offer letter was tendered to the Lessee dated November 20, 2006 stating the new rent was \$8,000. The tenant subsequently accepted. Staff notes that the amount is in error and should be \$2,000 (\$8,000 x 25% = \$2,000).

As background, the Board of Land and Natural Resources (Board) typically issues leases to private individuals and entities via public auction. The new rent at reopening is established at fair market rental value by an appraisal. If the tenant or prospective tenant is an eleemosynary (charitable) organization, the Board may issue the lease, at a nominal rent, by direct negotiation. The statute providing the Board this authority is as follows:

**§171-43.1 Lease to eleemosynary organizations.** The board may lease, at a nominal consideration, by direct

negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L 1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c 202, §1; am L 1991, c 212, §3]

It is noted that the 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while the 501(c)(3) organization is a privately organized charitable organization.

CONCLUSION:

Therefore, when considering lease dispositions to eleemosynary (charitable) organizations or religious organizations, the Board may issue the lease by public auction at fair market rent, or by direct negotiation at an amount below fair market rental (i.e., nominal rent). On May 13, 2005, the Land Board established a Minimum Rent Policy that stated, among other things, that the Minimum Rent for Lease be no less than \$480 per year. Land Division generally issues Leases at fair market rental value as determined by an appraiser or via public auction. Staff believes "nominal rent" under Section 171-43.1, HRS ought to be anywhere between fair market rent, or lower, but not lower than the minimum rent of \$480 per year.

There should be a reasonable and fair annual rent for all Land Division non-profit tenants. Therefore, staff is recommending the new annual rent be \$480.

Staff has requested information on the Lessee's operations, services, program measurements, budget and funding and has attached whatever the Lessee has provided [Exhibit B].

The Lessee is in compliance with all lease terms and conditions. Rent of \$2,030 is paid up to April 30, 2007. Liability insurance expires on September 5, 2007. Lessee has posted a \$4,060 surety that expires on October 22, 2007. In the past two (2) years there has been no outstanding compliance issues.

RECOMMENDATION: That the Board

1. Amend General Lease No. S-5523, The Volcano Art Center, Lessee, by (1) add 'Effective May 1, 2007 to April 30, 2017, the annual rental shall be \$480 per annum', subject to:
  - A. The standard terms and conditions of the most current lease amendment document form, as may be amended from time to time;

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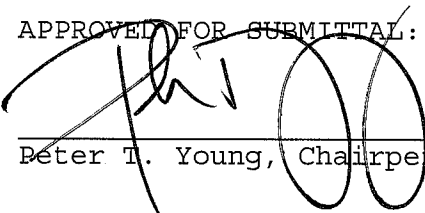
- B. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

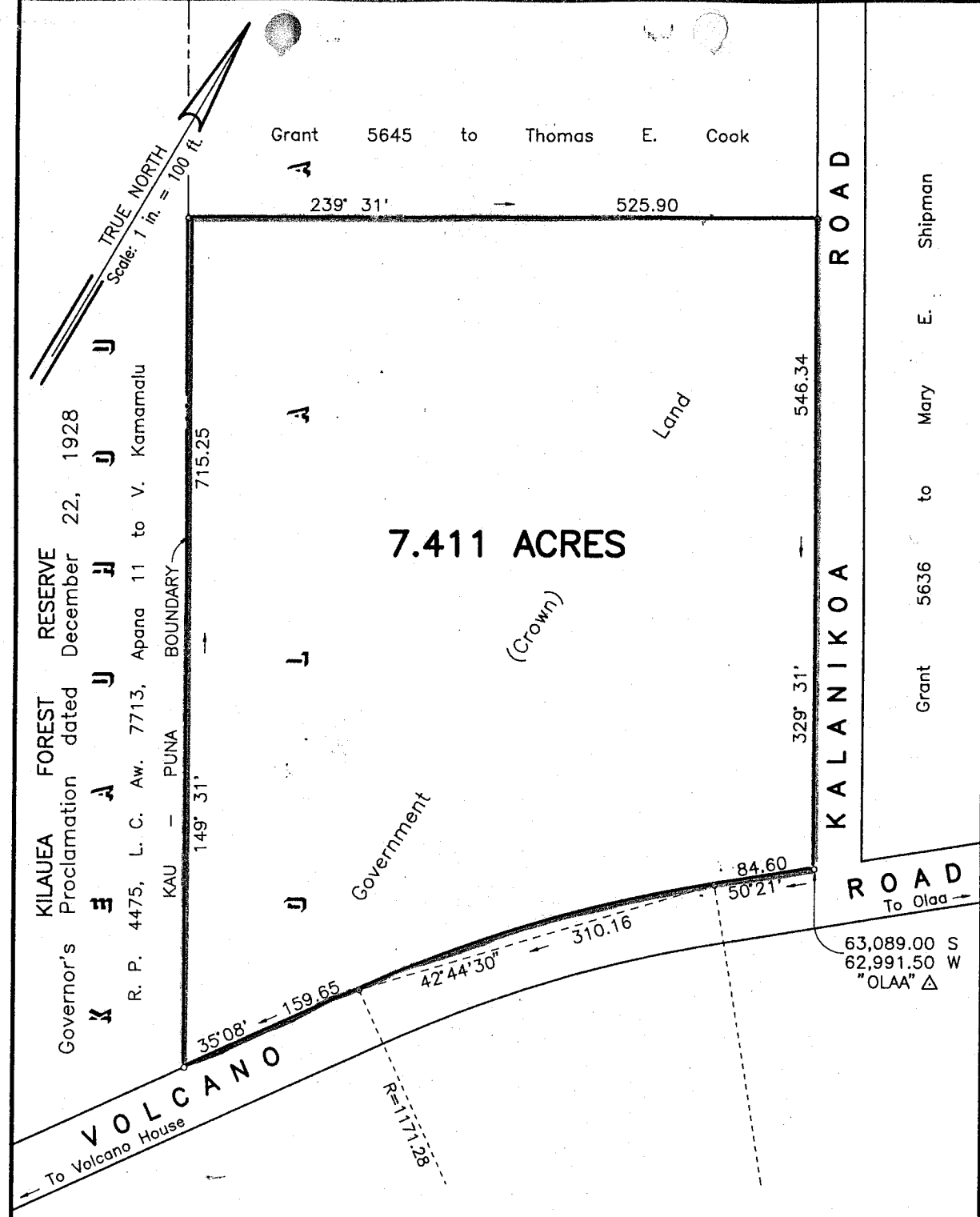
Respectfully Submitted,



Charlene E. Unoki  
Assistant Administrator

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Peter T. Young, Chairperson



# VOLCANO ART CENTER

Olaa, Puna, Island of Hawaii, Hawaii

Scale: 1 inch = 100 feet

REDUCED NOT TO SCALE

JOB H-211(96)

C. BK.

TAX MAP 1-9-05:9

C.S.F. NO. 22,555

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

EXHIBIT 'A'

E.T. Jan. 16, 1

**APPLICATION AND QUALIFICATION QUESTIONNAIRE**

(Non-Profit)

RECEIVED  
LAND DIVISION

Write answers in the spaces provided. Attach additional sheets as necessary, clearly indicating the applicable section number.

**Part I: General Information**

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

1. Applicant's legal name: Volcano Art Center
2. Applicant's full mailing address:  
P.O. Box 129  
Volcano, HI 96785-0129
3. Name of contact person: Marilyn L. Nicholson  
Contact person Phone No.: (808) 967-8222 Fax No.: (808) 967-8512
4. Applicant is interested in the following parcel:  
Tax Map Key No.: (3) 1-9-05:9 Location: 19-4074 Old Volcano Rd., Volcano  
If Applicant is current lessee: General Lease No.: S-5523
5. When was Applicant incorporated? 1974
6. Attach the following:
- A. Articles of Incorporation
  - B. Bylaws
  - C. List of the non-profit agency's Board of Directors
  - D. IRS 501(c)(3) or (c)(1) status determination
  - E. Tax clearances from State of Hawaii and respective county Real Property Tax Office.
  - F. Audited financial statements for the last three years. If not audited, explain why.  
If Applicant is a new start-up, attach projected capital and operating budgets.
  - G. Any program material which describes eligibility requirements or other requirements to receive services

**Part II: Qualification**

7. Is Applicant registered to do business in Hawaii? Yes/No
8. Has Applicant received tax exempt status from the Internal Revenue Service? Yes/No
9. Is Applicant licensed or accredited in accordance with federal, State or county statutes, rules, ordinances, to conduct the proposed activities? Yes/No

List all such licenses and accreditations required: None required

10. Is Applicant in default or otherwise not in good standing with any State department (e.g. POS agency, DCCA, DLNR, etc.)? Yes/No

If yes, explain:

11. Has Applicant had a State of Hawaii lease, permit, license, easement or sale in fee cancelled within the last five years? If yes, list: Yes/No

12. Does Applicant have any policies which discriminate against anyone on the basis of race, creed, color, national origin, sex or physical handicap? Yes/No No

13. Has Applicant received funding from a federal, State, or county government agency, the Aloha United Way, and/or a major private foundation within the last three years? Please list all such contracts below: Yes/No

14. If Applicant has not received funding from a federal, State or county government agency, the Aloha United Way and/or a major private foundation during the past three years, describe Applicant's qualifications to effectively perform the proposed services, including but not limited to, grants or subsidies received from non-major, private fundors and/or staff or Board members who possess significant experience in Applicant's service field.

**EXHIBIT "B"**

Part III: Program Activities and Persons to be Served

15. What activities will be conducted on the premises to be leased?

The administration and conducting of educational programs in the literary, visual and performing arts, plus programs in environmental education and Hawaiian cultural classes and activities.

16. What are the specific objectives of these activities?

1) To bring educational opportunities for all ages to our community; 2) to provide opportunities for people to learn new job skills; 3) to provide a venue for community cultural activities.

17. Describe the community need for and the public benefit derived from these activities.

There are few educational opportunities available in our community aside from those offered to K-8 students in our one school. Our education programs provide needed learning and experiential opportunities in the arts and in learning about the environment and cultural heritage of the region. We provide opportunities that would otherwise not be available.

18. Describe the targeted population for these activities by: 1) age group, 2) gender, 3) ethnic background, 4) income level, 5) geographic location of residence, 6) special needs/disability, and 7) other applicable characteristic(s).

Our programs are open to all ages, with no gender or ethnic restrictions. For fee-based programs, we provide generous financial subsidies to needy students of all ages. Participants and attendees primarily come from East Hawaii, although we also welcome those from throughout the State and visitors to Hawaii.

19. Describe all eligibility requirements of clients to participate in the activities, e.g. age, income level, ethnic background, income level, disability, etc.

Classes such as our Teen Art Camp or Summer Childrens Camp likelehu have age restrictions, but most are open to all. Our new campus facilities are designed to be accessible to the physically handicapped or challenged.

20. Do you require membership to participate in these activities?

Yes (No)

If yes, list the requirements of becoming and remaining a member:



21. How many unduplicated persons will engage in the activities annually?

<u>Activity</u>	<u>Persons Per Year</u>
<u>Classes &amp; Workshops</u>	<u>600</u>
<u>Elderhostel Programs</u>	<u>350</u>
<u>Rainforest Tours &amp; Workdays</u>	<u>200</u>
<u>Special Events including lectures</u>	<u>800</u>

22. Is State funding made available for the activities to be conducted on the leased premises? (Yes)No  
Partial Funding

If yes, by which State agency: HTA & State Foundation on Culture & the Arts

23. List all activities to be conducted on the leased premises which require payment of excise taxes, e.g. subleasing, sale of products or services. Include an estimate of annual gross revenues from each activity.

<u>Incidental sales of Volcano Art Center logo items</u>	<u>\$ 200</u>
<u>Annual fundraising auction</u>	<u>\$5500</u>
<u>Facility &amp; equipment use fees</u>	<u>\$1500</u>

Development of the Land

24. Describe the proposed site development plan for the property, indicating the location and size of buildings, parking areas, landscaped areas and related uses. Attach sketch of plan if available.

Approximately 3.5 of the 7.4 acres are begin developed for educational facilities. The remaining area is being maintained in native forest, with a nature trail through it that is open to the public at no charge. A site plan with buildings indicated is attached.

25. What improvements to the land do you intend to make and at what cost?

We have already built one building at a cost of \$1.4 million.  
We anticipate completing additional site work in 2006 for \$500,000.  
At least one additional building will be built in 2007 at an estimated cost of \$1.5 million. Trail work will cost about \$70,000.

26. How will the improvements be funded?

Improvements will be funded through grants, a \$500,000 USDA loan, the sale of existing property, earned income, and fundraising.

27. Describe all environmental, land use and other permitting requirements which must be met to develop the land as proposed.

Department of Health - injection wells and septic system (approved)  
County of Hawaii - building permits (not yet submitted)

28. Will you be subleasing any portion of the property? If yes, describe the sublease uses:

No portion of the property will be subleased.

Part V: Notarized Certification

I/We hereby certify that the statements and information contained in this Application and Questionnaire, including all attachments, are true and accurate to the best of my/our knowledge and understand that if any statements are shown to be false or misrepresented, I/we may be disqualified from receiving a lease or my/our lease may be canceled.

Volcano Art Center

Applicant Name

Applicant Name

By:

By:

Marilyn L. Nicholson  
Its: Executive Director

Its:

Date: 06/07/06

Subscribed and sworn to before me this

7th day of June, 2006.

L. SILVA  
Notary Public

County of: HAWAII

State of: HAWAII

My commission expires: NOV 2, 2007

LS